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December 21, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW - Room TW-A306
Washington, DC 20554

Re: Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier
CC Docket No. 96-45, In the Matter of Federal-State Joint Board on Universal Service

Dear Secretary Dortch:

Enclosed herewith is the original of the above-referenced Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate, together with the therein described attachments. Please file the same. Please note that the Wyoming Commission has this day sent true and complete copies to the following persons by United States mail, addressed as follows:

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW - Room 8-B115
Washington, DC 20554

Jonathan S. Adelstein
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Federal Communications Commission
445 12th Street, SW - Room 8-C302
Washington, DC 20554

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Wireline Competition Bureau
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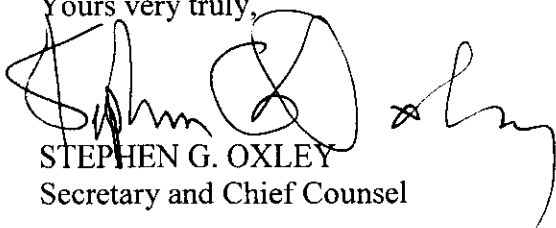
Sheryl Todd
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW - Room 5-B540
Washington, DC 20554

Michael Ceballos
Vice President
Qwest Communications
P. O. Box 428
Cheyenne, Wyoming 82003

Today, the Wyoming Commission also filed a copy of the Joint Petition and attachments electronically with the Federal Communications Commission. Please let me know if there are any questions about this filing.

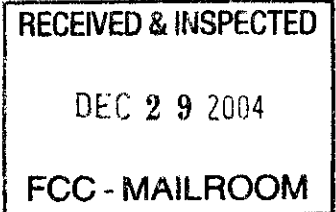
Thank you for your kind assistance.

Yours very truly,



STEPHEN G. OXLEY
Secretary and Chief Counsel

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of

Federal-State Joint Board on
Universal Service

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)
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CC Docket No. 96-45

**JOINT PETITION OF THE
WYOMING PUBLIC SERVICE COMMISSION
AND THE WYOMING OFFICE OF CONSUMER ADVOCATE
FOR SUPPLEMENTAL FEDERAL UNIVERSAL SERVICE FUNDS FOR CUSTOMERS
OF WYOMING'S NON-RURAL INCUMBENT LOCAL EXCHANGE CARRIER**

(Submitted December 21, 2004)

The Wyoming Public Service Commission (WPSC) and the Wyoming Office of Consumer Advocate (WOCA) hereby petition the Federal Communications Commission (Commission) for supplemental universal service funding for customers of Wyoming's only non-rural incumbent local exchange carrier, Qwest Corporation (Qwest). This petition is filed pursuant to the Commission's decision and direction provided in its October 27, 2003, *Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order* (the *Order on Remand*) in CC Docket No. 96-45, FCC 03-249. It is also a follow-up to the annual residential rate comparability certification filed on September 30, 2004, pursuant to 47 C.F.R. § 54.316.

BACKGROUND

In its *Order on Remand*, the Commission, more specifically than in its prior decisions, addressed the universal service principles of: [a] affordability of rates for quality services, [b] sufficiency of the universal service fund, and [c] ensuring that rural customers have access to services reasonably comparable to those available in urban areas at prices that are also reasonably comparable to those of urban customers.¹ The *Order on Remand* also addressed a

¹ These principles are found in Section 254 of the federal 1996 Telecommunications Act.

number of specific issues, including: the computation of the support to be provided non-rural carriers, the definitions of “sufficient” and “reasonably comparable”, the required annual certification, and other specifics of universal service funding. However, in this petition we are particularly interested in the Commission’s adoption of the Joint Board’s recommendation “to permit states to request further federal action, if necessary, based on a demonstration that the state’s rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide” with the burden on the state to show that it “has taken all reasonable steps to achieve reasonable comparability through state action and existing federal support.”²

The Commission’s supplemental rate review process contains four steps. First, states must annually review rates in rural high-cost areas served by non-rural carriers to assess the comparability of rural rates to urban rates nationwide. Second, states must submit an annual certification to the Commission regarding the comparability of the rates. Third, if a state has not achieved reasonable comparability between rural and urban rates, it must explain in its annual certification why it has not been able to achieve such comparability, and must do so each year until comparability has been achieved. Fourth, a state may request further federal action, based on a showing that federal and state actions taken together are not sufficient to achieve the required rate comparability.

In the *Order on Remand* at paragraph 57, the Commission states that the federal action could include, but is not limited to, “additional targeted federal support or actions to modify calling scopes or improve quality of service where state commissions have limited jurisdiction.” [Footnote omitted.] Furthermore, the Commission has indicated its intention of allowing great

Section 254(b)(2) states, “Quality services should be available at just, reasonable, and affordable rates.” Section 254(b)(5) states, “There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”

Section 254(b)(3) states,

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

² See October 27, 2003 *Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, CC Docket No. 96-45 FCC 03-249, paragraph 4.

flexibility regarding the request for further federal action.³ The Commission also places the burden of showing the need for further federal action on the states, requiring [a] a full explanation of the basis of the request, including a demonstration of the lack of rate comparability, and [b] a full explanation of the actions that the state has taken in its attempt to achieve rate comparability.⁴ The Commission has indicated its intention to act as expeditiously as possible on a request for further action after it is received, including an expeditious public notice seeking comment on the request.⁵

It is also important, for background as to why we are filing this Joint Petition, to recall the Commission's definitions of "sufficient" and "reasonably comparable." The Commission has defined "sufficient" as "enough federal support to enable states to achieve reasonably comparable rural and urban rates."⁶ As part of its definition of "reasonably comparable," the Commission presumed rural rates would be reasonably comparable to urban rates if they "deviate no further than two standard deviations above the national average urban rate in the Bureau's *Reference Book*,"⁷ referring to the *Reference Book of Rates, Price Indices and Expenditures for Telephone Service* (the *Reference Book*) annual survey of local telephone rates conducted by the Commission's Wireline Competition Bureau. At the time of the *Order on Remand*, the Commission presumed that if a rural rate is \$32.28⁸, or less, it would be considered to be within the range of reasonable comparability to nationwide urban rates. This benchmark is

³ *Order on Remand*, paragraph 95 where the Commission states,

We reject arguments that we should not adopt the Joint Board's recommendation to permit states to seek further federal action because the process is ill-defined. Because the ability to request further federal action is intended to address isolated, unique circumstances, we concur with the Joint Board's recommendation that states should be afforded great flexibility in showing that further federal action is required.

⁴ *Order on Remand*, paragraph 93.

⁵ *Order on Remand*, paragraph 94.

⁶ *Order on Remand*, paragraph 36.

⁷ *Order on Remand*, paragraph 38.

⁸ As noted in footnote 204 of the *Order on Remand* and the *Reference Book* data, the related benchmark of \$32.28 should include not only the monthly charge for flat-rate service, but also subscriber line charges, taxes, 911 charges, and other charges. At the time of the order, these charges, over and above the flat-rate price, were estimated to be about \$8.78 nationwide.

to be updated each year. The Commission also stated its willingness to consider other factors or specific information that would show why this presumption should not apply to a specific rural area.

The WPSC and the WOCA remind the Commission that Wyoming's prior concerns about rate affordability and comparability were specifically and pointedly addressed in the *Order on Remand*. At paragraphs 143 through 145, the Commission denied the WPSC's petition for reconsideration of the Commission's *Ninth Report and Order*. However, as part of the denial of this petition, the Commission "commends the Wyoming Commission for implementing pro-competitive policies by deaveraging and eliminating implicit subsidies."⁹ Furthermore, the Commission offered each state, including Wyoming, the opportunity to request further federal action based on a showing of both best efforts to achieve rate comparability and the resulting lack of urban-rural rate comparability. This section of the *Order on Remand* concludes, at paragraph 145, "We anticipate that this proposal, if adopted, would help to address the concerns raised by the Wyoming Commission in its petition."

2004 RATE CERTIFICATION FILING

On September 30, 2004, the WPSC filed the required annual residential rate certification for its non-rural incumbent carrier with the Commission and the Universal Service Administrative Company (USAC). Because Wyoming has only one incumbent non-rural carrier, this annual certification related specifically to Qwest's rates and service in Wyoming. In its certification, the WPSC assumed a nationwide urban rate benchmark of \$34.16 per month based on the most recent information in the *Reference Book*. The certification filing concluded that Qwest's "rural residential rates are not reasonably comparable to the nationwide urban rate benchmark."¹⁰

Several reasons for this conclusion of non-comparability are summarized on page 2 of the WPSC Rate Certification filing:

⁹ *Order on Remand*, paragraph 144.

¹⁰ See *WPSC New Residential Rate Comparability Certification*, filed September 30, 2004, page 2.

There are several reasons why the rates are not reasonably comparable, with the main factor being the fact that Wyoming has cost-based rates for its rural areas and no other state does (a fact recognized several times by the FCC in the *Remand Order*). The WPSC has fully implemented the statutory mandates of the pro-competitive Wyoming Telecommunications Act of 1995 (Wyoming Act) (W.S. §§ 37-15-101 through 37-15-502). Relevant sections of the Wyoming Act are W.S. § 37-15-402 which requires cost-based pricing for all retail telecommunications services in Wyoming, W.S. § 37-15-403 which prohibits cross subsidies and eliminates implicit subsidies and W.S. § 37-15-501, which establishes the Wyoming Universal Service Fund. Qwest now has in place de-averaged cost-based residential rates with all implicit subsidies removed from the residential rates and the WPSC has implemented the explicit subsidy support program -- the Wyoming Universal Service Fund. The residential rate shown on Exhibit 1 to this certification reflects the true high cost, rural nature of much of Wyoming.

The WPSC's annual rate certification found that many of Qwest's customers were paying the monthly rate of \$42.28, including taxes and surcharges. This rate is 124% of the nationwide urban rate benchmark. This rate is the end result *after* both federal universal service funds and Wyoming universal service funds are credited directly to customers' bills. Attachment A hereto is a copy of the WPSC's 2004 annual certification, *New Residential Rate Comparability Certification for Wyoming's Non-Rural Incumbent Carrier Serving in Rural Areas within Wyoming Pursuant to 47 C.F.R. § 54.316*, filed with the Commission and USAC on September 30, 2004.

MORE FACTS ON WYOMING'S LACK OF RATE COMPARABILITY IN SPITE OF ITS BEST EFFORTS

Wyoming has a small population and low population density. According to the 2000 census¹¹, Wyoming had the lowest population in the nation, with fewer than 500,000 people (0.2% of the total population in the United States) and more than 97,100 square miles of land, yielding a population density of 5.1 persons per square mile. Only Alaska has a lower population density, with 1.1 persons per square mile and about 627,000 people. However, Alaska is nearly seven times larger than Wyoming. In contrast, the District of Columbia is the

¹¹ Data taken from the U.S. Census Bureau, American FactFinder, based on the year 2000 census data. This data shows that the average population density in the United States is 79.6 persons per square mile of land area.

second least populous geographic area in the United States, with about 572,000 people, yet it has a population density of more than 9,316 persons per square mile.

Wyoming has very real universal service needs. It is a predominantly rural state with a small and widely dispersed population, few urban centers and some of the most physically difficult-to-serve territory in the United States. Much of the cost of traditional wireline telephone service is driven by distance and density. This is especially true for the local loop portion of the cost which is driven by the amount of trench that must be dug and the amount of cable that must be laid in that trench. In low population density areas¹², long lines are often needed to serve relatively few customers. Qwest serves about 75% of all customers in Wyoming, including customers in much of rural Wyoming. Attachment B to this petition is a map showing that Qwest serves throughout Wyoming and not only in the most urban areas of the state. This is the first reason why it is difficult for Wyoming to meet the rate comparability test defined by the Commission.

Second, substantial network upgrades have occurred over the past five to ten years in Wyoming. With limited exceptions, fiber interoffice connections have been deployed throughout the state. All of Wyoming's switches have been upgraded to digital. Redundant loops have been built by Qwest, by itself and through partnerships with independent local rural carriers. While Wyoming must confront issues arising from technologies that limit service based on loop length and must build network in a fiscally responsible manner, we are far from being a technologically backwater state. The cost of the investments necessary to provide this type of quality local service -- service that is capable of providing the advanced services referenced in Section 254 of the 1996 Telecommunications Act¹³ -- are included in the cost studies that underlie Wyoming retail and wholesale rates. This affects Wyoming's ability to meet the rate comparability test as defined by the Commission.

¹² Eight of Wyoming's twenty-three counties have fewer than 10,000 people with one county having fewer than 3,000 people.

¹³ Section 254(b)(2) of the 1996 Telecommunications Act states, "Access to advanced telecommunications and information services should be provided in all regions of the Nation."

Third, and unlike all of the other states, Wyoming has fully prepared its local exchange markets for competition, an undertaking that has dramatically and sometimes painfully increased prices for residential retail customers. Between 1995 and 1999, Qwest made multiple rate filings before the WPSC to transform its rates from traditional, implicit subsidy-laden rates to total service long-run incremental cost-based rates supported only, when necessary, by explicit subsidies. This multiyear process involved:

- Treating an access line as an access line, so that business lines and residential lines are priced the same (i.e., at their true cost), rather than continuing pricing on the ability to pay or value of service.
- Assigning the cost of the local loop to basic local service rather than trying to collect this fixed cost-based item from either optional services (e.g., call waiting, call forwarding) not subscribed to by all customers or from usage based services (e.g., switched access), where larger users would pay a portion of the cost for smaller users -- a continuation of implicit subsidies.
- Deaveraging the cost and price of retail service to recognize that it costs more to serve a more rural customer not located in a clustered population of subscribers.¹⁴
- Setting retail rates at or above the total service long-run incremental cost of service so entering competitors are not automatically and immediately priced out of the market through the continuation of implicit subsidies.

Each of these has increased the price of local service to Qwest's customers. The following table provides a comparison of 1995 prices and today's prices¹⁵ for Qwest's Wyoming customers:

	1995	2004
Qwest Residential Base Rate Area	\$14.64	\$23.10
Qwest Residential Zone furthest from Base Rate Area	\$24.54	\$69.35
Qwest Business Base Rate Area	\$30.56	\$23.10
Qwest Business Zone furthest from Base Rate Area	\$41.46	\$69.35
Qwest Per Minute Intrastate Switched Access Rate	\$0.0971	\$0.014698

¹⁴ Qwest's prices are disaggregated by a base rate area and three zones. The base rate area is the most populous area of each exchange. The zones are amoeba shaped areas surrounding the base rate area that represent less dense and less populous areas.

¹⁵ Price shown is before the federal universal service support and Wyoming universal service support are credited to a customer's bill. This information is detailed in a December 2002 WPSC report, *The Pricing of Basic Telecommunications Service under the Wyoming Telecommunications Act of 1995*, found at <http://psc.state.wy.us/htdocs/telco/TeleServPrice.PDF>.

Fourth, Wyoming has successfully implemented an explicit universal service funding mechanism as authorized by our legislature at W.S. §§ 37-15-501 and 502. It provides for support directly to customers and is designed so that no customer is required to pay more than 130% of the statewide weighted average local exchange rate, excluding taxes and surcharges, for basic local service. For the twelve months beginning July 1, 2004, the statewide weighted average local service rate in Wyoming is \$24.36, making the benchmark support threshold \$31.67. Based on current, forward looking cost-based local service rates for all companies in Wyoming, there is a need to support a fund of about \$3.6 million annually. Revenue for the fund is provided by an assessment on all intrastate telecommunications revenue, including intrastate wireless revenue, which currently is estimated to be about \$270 million annually. This translates into an assessment of just under 1.5% on an ongoing basis¹⁶ at current revenue levels. However, this funding level cannot be expected to remain constant and is expected to increase as [a] intrastate access revenues decrease substantially with the increasing use of wireless telephony for long-distance calls, and [b] more competitive local exchange carriers (CLECs) and wireless companies seek to receive Wyoming universal service fund support.

The fact that Wyoming has instituted a working, viable, explicit universal service fund meets the Commission's test requirement that a state must be trying to help itself. However, using more of Wyoming's universal service funds to keep Wyoming rates affordable and comparable to urban rates would be difficult, especially because Wyoming's urban customers already pay a significantly larger bill than do urban customers in other states. Furthermore, Wyoming rural customers have also engaged in the self-help desired by the Commission, since their Wyoming universal service fund assessment is based on their gross rate, rather than their rate net of federal and state assistance. Thus, a rural Qwest customer with a gross rate of \$69.35 would pay more than an extra \$1 per month (i.e., $\$69.35 \times 1.5\%$) for their portion of the Wyoming universal service fund, adding to the burden they already bear of having some of the highest local rates in the nation. Moreover, they still pay their full share of federal universal service charges.

¹⁶ In the past, the assessment has ranged from a low of 1% to a high of 6%.

The WPSC and WOCA support this revised and rationalized pricing structure as an important element in preparing the Wyoming market for competition. The continued use of implicit subsidies would not have been conducive to the entry of competitors into the Wyoming market. We were willing to take all the transitional pricing steps needed to move from monopoly markets to competitive markets, recognizing that competition was a goal of both the federal Telecommunications Act of 1996 and the Wyoming Telecommunications Act of 1995. Yet, alongside this transition were to be both federal and state mechanisms to ease the transition to market-based rates and to assist in keeping rates affordable.¹⁷ Wyoming, more than any other state, has taken to heart the concept of preparing for competition. However, this should not be done without the promised federal support mechanism to assist in the transition process while markets become more fully and effectively competitive. We have done what we can ourselves but we deserve additional assistance as provided for in the federal Telecommunications Act of 1996.

REQUEST FOR ADDITIONAL FEDERAL UNIVERSAL SERVICE FUNDS

The Commission has opened the door to the states to ask for further federal action based on isolated, unique circumstances. In our discussion above, we have shown the unique challenges Wyoming faces. We have shown why the current level of state and federal universal service funds, taken together, are still inadequate to keep current rates comparable under the Commission's test of urban/rural rate comparability. Some respondents have argued and will continue to argue that our request is premature, asserting that the Commission must establish a more rigidly defined one-size-fits-all process for making these requests before the Commission grants supplemental assistance. The Commission has already rightly rejected these arguments¹⁸, while at the same time working to put some parameters and guidelines in place relative to these individualized requests. We ask that the Commission continue to reject the stalling arguments that our request is premature. We have waited long enough. We have had competition-ready

¹⁷ See May 8, 1997 *Report and Order* in CC Docket No. 96-45, paragraph 1:

"In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission and the states to take the steps necessary to establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including low-income consumers, eligible schools and libraries, and rural health care providers."

¹⁸ *Order on Remand*, paragraph 95, "We reject arguments that we should not adopt the Joint Board's recommendation to permit states to seek further federal action because the process is ill-defined."

prices in place for several years and we have removed competition-strangling implicit subsidies from retail basic service rates in Wyoming, a step few, if any, other states have been willing to take in order to advance competitive markets in rural high-cost service areas. If rates for local service are “reasonable” in Wyoming, one has to ask why other states are so reluctant to rebalance rates and remove implicit subsidies supporting low local service rates. We have asked the Commission for help for several years but the Commission was not yet ready to address our specific need. Now, with the Commission’s parameters in place, it is time to examine the effect of implementing truly and thoroughly pro-competitive policies in a rural state.

We ask the Commission to authorize additional federal high cost support funds to further assist in moving the rates of Qwest’s Wyoming customers closer to the threshold of urban/rural rate comparability. We use the following illustration¹⁹ to show the magnitude of funds that would assist in this regard.

	Base Rate Area	Zone One	Zone Two	Zone Three
Basic Service Rate	\$23.10	\$23.10	\$23.10	\$23.10
Zone Additive	\$0	\$15.50	\$25.50	\$46.25
GROSS RATE	\$23.10	\$38.60	\$48.60	\$69.35
Federal USF Credit	0	(\$6.93)	(\$14.18)	(\$28.00)
RATE NET OF FUSF	\$23.10	\$31.67	\$34.42	\$41.35
Wyoming USF Credit	\$0	\$0	(\$2.75)	(\$9.68)
Net Rate (before Taxes and Surcharges)	\$23.10	\$31.67	\$31.67	\$31.67
Subscriber Line Charge	\$6.50	\$6.50	\$6.50	\$6.50
FUSF Surcharge	\$0.58	\$0.58	\$0.58	\$0.58
Telecomm Relay	\$0.06	\$0.06	\$0.06	\$0.06
Wyoming Lifeline	\$0.01	\$0.01	\$0.01	\$0.01
E 9-1-1	\$0.75	\$0.75	\$0.75	\$0.75
Federal Excise Tax	\$0.93	\$1.16	\$1.16	\$1.16
Wyoming Sales Tax	\$1.24	\$1.55	\$1.55	\$1.55
FINAL BILL TO CUSTOMER	\$33.17	\$42.28	\$42.28	\$42.28
Commission Benchmark	\$34.16	\$34.16	\$34.16	\$34.16
Comparability Shortfall	\$0	\$8.12	\$8.12	\$8.12
Number of Lines	138,850	11,269	12,880	24,383
Necessary Additional Support	\$0	\$1,098,051	\$1,255,027	\$2,375,880

¹⁹ The number of lines in this illustration are taken from the Universal Service Administrative Company’s High Cost Model Support Projected by Wire Center, for Fourth Quarter 2004 as found in USAC Appendix HC15.

As illustrated in the above table, Wyoming would need additional support of about \$4.7 million annually in order to make the Qwest customers' rates reasonably comparable to nationwide urban rates. With nearly 113 million households nationally with telephones²⁰, and nearly \$112 billion in annual interstate and international revenues²¹, Wyoming's request for supplemental federal support is modest, especially in light of our competitive preparedness. Our requested \$4.7 million could be collected at a rate of *just over four cents per household per year*.

Wyoming rules require, if these supplemental funds were provided, that the money would be flowed back directly to customers as bill credits. Thus, we, the Commission and industry may all be assured that the funds will not be inappropriately used by Qwest. This is money for Qwest's customers, not its coffers.

Even though our Joint Petition may cause some respondents to question the competitive fairness of allowing the incumbent supplemental funds to achieve rate comparability, the needs of Qwest's rural customers in Wyoming are well documented and real. Some may claim that providing supplemental funds would only be proper if they were also paid out to competitors on the same dollar per customer basis as is allowed to the incumbent. While we agree that the question of whether any equivalent supplemental funds should be provided to Qwest's competitors needs to be resolved, it should be done in a manner that neither interferes with nor postpones the Commission's response to our petition. We are unaware of any Commission orders to date which have addressed, let alone resolved, this supplemental funding issue.

CONCLUSION

Wyoming has eliminated implicit subsidies from rates and implemented rates under which each service covers its actual costs. We have implemented an explicit state universal service funding mechanism and have otherwise prepared Wyoming telecommunications markets for competition, consistent with the federal and Wyoming Telecommunications Acts. As the Commission had often recognized, implicit subsidies are unsustainable in the competitive

²⁰ Information taken from Commission's *Telephone Subscriber Report* issued August 2004.

²¹ Information taken from *Federal-State Joint Board on Universal Service Monitoring Report* issued October 2004.

environment envisioned by the 1996 Act. See, e.g., *Order on Remand*, paragraph 16. The Commission called on the states in the *Order on Remand*, paragraph 127, to “replace implicit support mechanisms with explicit support mechanisms that will be sustainable in a competitive environment.” We have answered your call.

We support the Commission’s decision to allow states “to request further federal action, if necessary, based on a demonstration that the state’s rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide.” You rightly place the burden on the state to show that it “has taken all reasonable steps to achieve reasonable comparability through state action and existing federal support.” In response, Wyoming has made the needed annual review of rates in rural high-cost areas served by Qwest (Wyoming’s non-rural carrier) to assess their comparability to nationwide non-rural rates. Wyoming has submitted the annual certification regarding rate comparability. We have explained why such comparability has not been achieved. In this Joint Petition, we have demonstrated that federal and state actions taken together are not sufficient to achieve the required rate comparability. Therefore the WPSC and the WOCA hereby request, based on our showings above, that the Commission take immediate remedial action to allow additional federal support for Qwest’s rural customers in Wyoming as described and quantified above.

Respectfully Submitted,



Rob Hurless
Chairman, WPSC



Steve Furtney
Commissioner, WPSC

Kathleen A. Lewis
Commissioner, WPSC



Bryce J. Freeman
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Irene Flannery
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2000 L Street N.W., Suite 200
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RE: New Residential Rate Comparability Certification for Wyoming's Non-Rural Incumbent Carrier Serving in Rural Areas within Wyoming Pursuant to 47 C.F.R. § 54.316 (CC Docket No. 96-45)

Dear Ms. Dortch and Ms. Flannery:

The Wyoming Public Service Commission (WPSC) hereby submits, pursuant to 47 C.F.R. § 54.316, its initial residential rate comparability certification to the Federal Communications Commission (FCC) and to the Universal Service Administrative Company (USAC). 47 C.F.R. § 54.316, **Rate comparability review and certification for areas served by non-rural carriers**, requires state commissions to annually review the comparability of residential rates in rural areas of the state served by non-rural incumbent local exchange carriers to urban rates nationwide. Qwest Corporation (Study Area Code 515108) is the only non-rural incumbent local exchange carrier in Wyoming and Qwest does serve in the rural areas of the state. 47 C.F.R. § 54.316 further requires the WPSC to certify to the FCC and the USAC whether the rates are reasonably comparable pursuant to the universal service principles contained in section 254(b)(3) of the federal Telecommunications Act of 1996.

This residential rate review and certification is pursuant to the FCC's expanded certification process contained in the FCC's *Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-249 released October 27, 2003 (commonly referred to as the *Remand Order*). This initial rate review and certification is due October 1, 2004, pertaining to residential rates in effect as of July 1, 2004, with rates compared to the current nationwide urban rate benchmark. The nationwide urban rate benchmark equals the most recent average urban rate plus two weighted average standard deviations. The average

urban rate and standard deviation are found in the most recent *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* published by the Wireline Competition Bureau of the FCC. For this initial certification, the nationwide urban rate benchmark is \$34.16 per month.

Exhibit 1 to this filing is a presentation of the Basic Service Rate Template for Wyoming as more fully described in the Joint Board's Recommended Decision, in paragraph 86 of the FCC's *Remand Order* and contained in Appendix F to the *Remand Order*. This Exhibit presents, in detail, the residential rate data for the most rural areas (Rural Zone 3) within Wyoming as required by the *Remand Order* and 47 C.F.R. § 54.316. This Exhibit shows that these rural residential customers, served by the non-rural incumbent local exchange carrier, pay a monthly rate of \$42.28, or 124 percent (124%) of the nationwide urban rate benchmark. Because of the manner in which federal support is targeted, residential customers located in Rural Zone 1 and Rural Zone 2 also pay the monthly rate of \$42.28. One hundred percent (100%) of the federal high cost support received by Qwest in Wyoming is reflected as a bill credit to its rural customers. Based on these facts, the methods in which the average urban rate was calculated and the rate comparison requirements contained in the *Remand Order*, the Wyoming Commission must conclude that its rural residential rates are not reasonably comparable to the nationwide urban rate benchmark.

There are several reasons why the rates are not reasonably comparable, with the main factor being the fact that Wyoming has cost-based rates for its rural areas and no other state does (a fact recognized several times by the FCC in the *Remand Order*). The WPSC has fully implemented the statutory mandates of the pro-competitive Wyoming Telecommunications Act of 1995 (Wyoming Act) (W.S. §§ 37-15-101 through 37-15-502). Relevant sections of the Wyoming Act are W.S. § 37-15-402 which requires cost-based pricing for all retail telecommunications services in Wyoming, W.S. § 37-15-403 which prohibits cross subsidies and eliminates implicit subsidies and W.S. § 37-15-501, which established the Wyoming Universal Service Fund. Qwest now has in place de-averaged cost-based residential rates with all implicit subsidies removed from the residential rates and the WPSC has implemented the explicit subsidy support program – the Wyoming Universal Service Fund. The residential rate shown on Exhibit 1 to this certification reflects the truly high cost, rural nature of much of Wyoming.

Since the WPSC has told the "Wyoming Story" many times in comments and reply comments during numerous federal Universal Service Fund proceedings, the FCC is very familiar with our situation. The WPSC was an active participant in the Rural Task Force on these important universal service issues. A recent example of this is the *Remand Order* where the FCC mentioned Wyoming and its unique circumstances several times (e.g., *Remand Order* ¶ 144). Another factor greatly impacting the rate comparison is the continued presence of substantial amounts of implicit subsidies in the rates that constitute the average urban rate and the nationwide urban rate benchmark.

In conclusion, the WPSC very much intends to pursue remedies to this residential rate disparity through requests for further federal action provided to state commissions in Part IV.D.2.e. of the *Remand Order*. The WPSC believes we can clearly demonstrate that the rates in rural, high-cost areas of Wyoming served by the non-rural incumbent local exchange carrier are not reasonably

comparable to urban rates nationwide and that Wyoming has taken all reasonable steps to achieve reasonable comparability through our actions and the application of existing federal support. Our request for further federal action may include variations of the additional targeted federal support as detailed and described in Part V.C.3. and Appendix G of the *Remand Order*. The WPSC looks forward to working with the FCC, the USAC and all other interested parties in achieving the Universal Service goals and principles contained in Section 254 of the federal Telecommunications Act of 1996.

Sincerely,

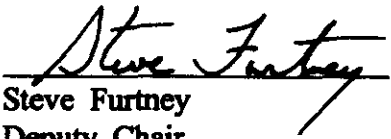

Steve Furtney
Deputy Chair
Wyoming Public Service Commission

Exhibit 1

**Wyoming Public Service Commission
Rate Comparability Analysis
Residential Rate Data**

**Residential Customers in the Most Rural Areas of Wyoming Served
by the Non-Rural Incumbent Local Exchange Carrier**

Rate, Surcharges, Credits and Taxes as of July 1, 2004:

Basic Residential Access Line Rate	\$69.35
Federal Universal Service Fund Credit	(\$28.00)
Wyoming Universal Service Fund Credit	<u>(\$9.68)</u>
Net Residential Rate Subject to Mandatory Surcharges and Taxes	\$31.67
Federal Subscriber Line Charge	\$6.50
Federal Universal Service Fund Surcharge	\$0.58
Telecommunications Relay System Surcharge	\$0.06
Wyoming Lifeline Program Surcharge	\$0.01
E911 Emergency Calling System Tax	\$0.75
Federal Excise Tax	\$1.16
Wyoming State Sales Tax	<u>\$1.55</u>
Total Basic Residential Service Rate to Customer	<u>\$42.28</u>

**Wyoming
Qwest Corporation
Local Exchange Areas**

